

## JUVENILE JUSTICE IN INDIA

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### ABSTRACT

Children are the future of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. But the last decade has seen a huge leap in the rate of Juvenile crime in a developing country like India. Today, Juvenile crime is like a disease in our society. A child is born with innocence and if nurtured with tender care and attention, then they grow in positive way. Physical, mental, moral and spiritual development of the children makes them capable of realizing their fullest potential. On the opposite side, harmful surroundings, negligence of basic needs, wrong company and other abuses may turn a child to a delinquent i.e. a juvenile delinquent. 'A child is an uncut diamond' it depends on the society how to shape an uncut diamond. Juvenile delinquency means transmission of an innocent child in to a juvenile offender. Delinquency is because of broken families, adolescent, instability, labeling, gang culture, hunger, poverty, malnutrition and unemployment, lack of recreation, uncongenial homes etc. Observation homes, Shelter homes have been started by the government for the sake of such offenders then also the rate is continuously increasing day by day. For delinquent juvenile it is said that Prevention is better than cure juveniles should be protected from going to the wrong path.

**Keywords:** Juvenile, Crime, Delinquency, Offenders, Juvenile Justice Act, Juvenile Justice Board, Heinous crime

## INTRODUCTION

The word “Juvenile” originates in a Latin word “Juvenis” that means young. A “Juvenile” or child means a person who has not completed eighteen years of age. Children are greatest national resource. They represent the nation and the coming future of the country. But what is worrying more is that the share of crimes committed by juveniles to total crimes reported in India has increased in the last some years. Juvenile crime, formally known as juvenile delinquency, is a term that defines the participation of a minor in an illegal act. And Juvenile Justice is the legal system that aspires to protect all children, bringing within its ambit “the children in need of protection”, besides those “in conflict with law”. Most of the factors causing delinquency are in plenty in a developing country like India. . Being a signatory to the UNO, India has adopted measures as per the international standard. The constitution makers of India provided separate treatment for the children and women. The assumption that reported in social milieu is under taken to make a strong JJS in India. In this article an attempt is made to analyze the special treatment adopted by India for Juveniles in the light of its constitutional philosophy and the international conventions.

## HISTORICAL BACKGROUND

### *International scenario:*

In 1704, Pope Clement XI first introduced the idea of the “instruction of profligate youth in institutional treatment. Then Elizabeth Fry established a separate institution for juvenile offenders. Subsequently, in Britain, Reformatory Schools Act and Industrial Schools Act were brought a statute book. The first Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. In England, the first Juvenile Court was set up in 1905. And the first probation law was enacted in the state of Massachusetts, USA in 1878 and in England in 1887. The second and sixth UN Congress on Prevention of Crime and Treatment of Offender in 1960 and 1980 discussed in detail the problem of Juvenile delinquency. They decided that there should be the standard Minimum Rules for the Administration of Juvenile Justice. Subsequently, it was accepted that special attention should be given to prevent Juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard

Minimum Rules for the Administration of Juvenile Justice. In 1989, the UN Convention on Rights of the Child (CRC) draws attention to four sets of Civil, Political, Social, Economic and Cultural rights of every child. The Convention provides the legal basis for initiating action to ensure the rights of children in society.

### ***Indian scenario:***

#### **Pre-Independence Era-**

India has a long history of providing separate treatment for juvenile offenders. Differential treatment for children can be traced as far back as the Code of Hammurabi in 1790 BC, the responsibility for their supervision and maintenance being vested on the family. During the colonial regime, in 1843, the first center for those children called “Ragged School” was established by Lord Cornwallis. The period between 1850 and 1919 was marked by social and industrial upheavals. The Apprentices Act, 1850, chronologically the first law which required that children between the ages of 10-18 convicted in Courts, to be provided vocational training as part of their rehabilitation process. Even the Indian Penal Code (1960) exempts children under the age of seven years from criminal responsibility. It also exempts children between the ages of seven to twelve years, because they have not attained sufficient maturity of understanding to consequences of their delinquency. For the treatment of Juvenile delinquents, the next landmark legislation was the Reformatory School Act, 1876 and 1897. Under the Act, the court could detain delinquents in a reformatory school for a period of two to seven years but after they had attained the age of eighteen years, the court would not keep them in such institutions. The Act of Criminal Procedure, 1898 provided special treatment for juvenile offenders. The Code provided probation for good conduct to offenders” up to the age of twenty one. Then Indian Children Act came from the Indian Jail Committee (1919-1920). Individual provincial government chooses to enact separate legislation for juvenile in their respective jurisdictions; provinces of Madras, Bengal and Bombay passed their own children Acts in 1920, 1922 and 1924, respectively. These laws contained provisions for the establishment of a specialized mechanism for the treatment of juveniles.

#### **Post-Independence Era-**

In post-independence period, the Juvenile Justice policy in India is structured around the Constitutional mandate prescribed in the language of Articles 15 (3), 21, 24, 39 (e) and (f), 45

and 47, as well as several international Covenants, such as the UN Convention on the Rights of the Child (CRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

The Juvenile Justice Bill, in conformity with Beijing Rules, was first introduced in the Lok Sabha on 22nd August, 1986, and the Central Children Act was replaced by this Juvenile Justice Act. The Law came into force in all the union territories but the States having no juvenile law were free to adopt it in 1974, India declared its National Policy for children. The policy included, among other things training and rehabilitation of delinquent, destitute, neglected and exploited children.

The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992. This Act has been further amended in the year 2006 and 2010. The Act provides a special framework for the protection, treatment and rehabilitation of children in the purview of the Juvenile Justice System. It has established the Child Welfare Committee to address the needs of “Children in need of care” and the Juvenile Justice Board to deal with “children in conflict with the law”. So, it deals separately with two categories of children. Juveniles accused of a crime or detained for a crime are brought before the Juvenile Justice Board, not in a regular criminal court, under this Act. The JJB consists of a metropolitan magistrate or a judicial magistrate of the first class and two social workers, at least one of whom should be a woman. “Police are the first major component in the justice system for juveniles.” A Special Juvenile Police Unit (SJPU) shall be set up in every police station. A child is usually brought before the JJB by a police officer or person from the SJPU. For the “children in conflict with law”, the Act envisages to establish Observation Homes and Special Homes. For the “Children in need of care and protection”, and a law has also been made to establish Comprehensive Children’s Homes. Any organization or person who brings a child before the court should inform their local police unit first. The police have twenty four hours to produce a child before the court once he/she is arrested. Once the child has been brought before the JJB, the child is registered into the closest Observation Home. “A Probation Officer (PO) has played a pivotal role under Juvenile legislation. If Juvenile is released on bail, pending inquire his contact with the PO should continue .It is the PO who will be the Juveniles guidance, and lead to the Juvenile’s self-realization of his wrongs and the will not to repeat the same on release after completion of inquiry. JJB are meant to resolve cases

within a four months period. Effort shall be made to release the juvenile on bail or probation. Under the JJA, 2000 the maximum sentence for a juvenile who has broken the law is three years in a protective home, no matter how serious the crime is.

The roles of aftercare organization are not less important. After care organizations are for the care, guidance and protection of Juveniles in conflict with law or children in need of care and protection who have completed their terms in the Special Homes or Children's Homes and their rehabilitation process is not completed. Aftercare is the means and rehabilitation is the end. After care organization shall enable such children to adapt to the society and encourage them to live a normal life. An amendment was made to the Act in 2006, with main emphasis on speeding up the administration of Justice for Juvenile and Model Rules 2007 and that amendment in the Act has further added to the effectiveness of this welfare legislation.

The Model Rules under the Juvenile Justice Act provide that the State Government shall provide for training for personnel of each category of staff in keeping with their statutory responsibilities and specific job requirements. Based on the resolution passed in the conference of Chief Justice of India 2009, several High Courts constituted "Juvenile Justice Committees" to be headed by sitting judges of High Courts. Juvenile Justice Act was further amended in 2011 and some provisions laid down in the Act were deleted as these provisions were discriminatory to the persons affected from leprosy.

The Government of India is once again contemplating for further amendments and the draft Bill is pending before Ministry of Law and Justice for scrutiny. In spite of having such a comprehensive law in India, it is often felt that there is an inherent risk of violation of child's rights within the Juvenile Justice system. There is a growing feeling that the police should be more serious in the case of children who need special care and these feeling comes mainly from an international thinking in favour of the police action for the welfare of neglected children. In our country, there is not much awareness about proper implementation of the legislation. Child "in need of care and protection" are continued to languish in poorly managed institutions and child "in conflict with law" are to be treated as criminals. Once again a "child-friendly" police system need to be ensured through ongoing sensitivity trainings. The improvement of child friendly juvenile justice system is a gradual process, which requires intensive follow-up and long-term commitment.



## JUVENILE JUSTICE SYSTEM ABETTING CRIMES BY MINORS?

In spite of the presence of careful child acts, the last decade has seen a huge leap in the rate of juvenile offenders in India. According to the latest National Crime Records Bureau, crimes committed by juveniles constituted 1.2% of the total crimes reported to police in 2012. Crimes committed by juveniles have increased by 85% between 2001 and 2011.

In 2012, police in India charged 27,936 juveniles for alleged involvement in crimes including murder, rape and rioting, according to NCRB. Among those who face Juvenile Justice Boards in 2012, two third (66.6%) were aged between 16 and 18 years, according to NCRB data. According to the NCRB data, 485 juveniles were involved in rape cases in 2002 and the figure swelled to 1,175 in 2012. But the alarming facts that the delinquent activities have also been plummeting. Worse still, youngsters, are not just committing petty crimes, but rather heinous crimes like rape and murder. It gets tough for the police to deal with juvenile offenders because the law possesses a lot of restrictions.

## TYPES OF JUVENILE DELINQUENCY

Juveniles are capable of committing the same crimes as adults. Because of the offender's status as minor, their acts are considered to be delinquent. There are three major categories of juvenile delinquency:

- (a) violent crimes which result in bodily injury, such as assault, rape, murder;
- (b) property crimes are committed when a juvenile uses force or threat of force to obtain the property of others
- (c) Drug-related crimes involve the possession or sale of illegal narcotics.

These three types of delinquency are listed in the documents of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Different classifications of Juvenile delinquency and delinquents have been given by various authors. A few important classifications are given below:

Eaton and Polk in "Measuring Delinquency" classified the following kinds of juvenile offences:

- i) Minor violations which include minor traffic violation,
- ii) Property violations,
- iii) Major traffic violations which include automobile theft,

- iv) Human addiction which include alcohol and drug addiction,
- v) Bodily harm which include homicide offences

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Ferdinand in his “The offence Patterns and Family structure of Urban, village and Rural Delinquents” presented two categories of juvenile offenders as follows:

1. Neurotic offenders delinquency is the result of powerful unconscious impulses, and
2. Character Disorder offenders who come from disorganized family and have had a barren environment in their childhood.

In “Juvenile Delinquency; Concept and Control”, Trojannovicz mentioned juvenile offenders in the five categories. They are:

- a) Gang-organized and Collective Delinquency,
- b) Unsocialized-aggressive Boys,
- c) Accidental Offender,
- d) Occasional Delinquency and
- e) Professional Delinquency.

### ***Causes of Juvenile Crimes:***

There is no single cause of Juvenile crimes, but there are many and varied causes. Basically, causes of Juvenile delinquently may be of three types:

**A. Biological Causes:** Biological problems such as speech and hearing problems, irritation, excessive strength etc. may lead to delinquency.

### **B. Socio-Environmental Causes:**

1. Mobility: Migration of persons to a new place where they are strangers offers them opportunity for crime.
2. Cultural conflicts: Cultural conflicts between inhabitants are immigrants” results in deviant behaviour and enormous increase in crime.
3. Family background:
  - i) *Family structure:* The nature and structure of the family are largely responsible for carving out the personality and that personality makes up of the children. A

functionally adequate family encourages growth, confidence, frankness and ability to face reality. The young human being needs to remain emotionally dependent on a mother figure for a considerable number of years. Without this attachment we know that children have difficulties in formation early relationship with other children. Delinquents mostly come from functionally inadequate homes.

- ii) **Broken Homes:** Broken Homes means a home where either of the parents is dead or living separately. In such situations, the child feels insecure and thereby finds his way on the cross roads. He is exposed to the anti-social activities, which he adopts to satisfy himself and in the process, he is led towards delinquency.
- iii) *Child's Birth order is the family:* It is found that the intermediate children are attended less by parents as compared to the oldest and youngest children who lead the intermediate children towards delinquency.
- iv) **Parent-child Relationship:** Misunderstandings, hard feelings, insufficient love and open conflicts between parents and child results in dissatisfaction and hostility in the child. Subsequently, such dissatisfaction and hostility precipitates social deviance. Alcoholic parents and constant quarrel between parents make the home environment intolerable for the children that lead to delinquent behaviour of the child. Even excessive punishment also leads to child's involvement in anti-social activities because of his feelings of frustration. Parents are responsible for teaching their children how to live in a normal life within their limits.

#### 4. Socio-economic condition:

The poverty contributes a major factor in commission of crime. Now-a-days, money is the parameter to measure the social status of a man in society. The crimes in the high circle of society easily are covered up through money. The rich-poor divide is considered to be instrumental in promoting youth crime.

#### **C. Psychological factor:**

Certain mental disorders that involve difficulties in the regulation of emotions and impulsive behaviour make children prone to criminal behaviour. Even depression can lead a person to adopt criminal ways. It acts as a vent to one's suppressed anger and aggression.



**D. Others:**

A few others causes of Juvenile crime may be noted as under:

- i) Bad company;
- ii) Extra-pocket money;
- iii) Revenge factor;
- iv) Poor literacy rate;
- v) Over exposure to media,
- vi) Lack of values;
- vii) Cheap literature;
- viii) Love of adventures;
- ix) Early sex experience; and
- x) Mental conflicts etc.

**PREVENTING JUVENILE DELINQUENCY**

It is widely proved that early-phase intervention represents the best approach to preventing juvenile delinquency. In order to prevent juvenile crime's we have to deal not only with maladjusted children whose difficulties bring them before law but also with those who while not violating laws are disturbing others in school and other places. First of all, we should identify such juveniles and thereafter give them treatment. Prevention requires individual, group, organizational efforts that aims at keeping aimed at keeping juveniles from breaking the law. Through the economic sector, development programmes with the professional training, vocational educations are the areas which can help and prevent youth involvement in Delinquent activities. In legal application of JJA it is vital for the authorities to be involved in the Juvenile justice system to build effective partnership with civil society. Involvements of NGOs and local communities can also help in preventing juvenile gang delinquency. Government should put more emphasis on attractive beneficial long-term schemes for juveniles so that they regain their self-confidence and feel motivated to join main stream of the society.

## RECENT DEVELOPMENTS IN INDIA

### *Aftermath of Nirbhaya Case:*

Today (After Nirbhaya case) many people are aware that a separate Justice System exists for Juveniles. Many people are not yet aware how JJS works. After the incidence of Nirbhaya people turned sentimental and expressed their hostile attitude towards the decision of court. They demanded death sentence for the child involved in Nirbhaya case. There was up roaring in parliament and the new law (Juvenile Justice Care and protection of children 2015) came into existence in India. It is a comprehensive provision for children alleged and found to be in conflict with the law. It also deals with children in need of care and protection. This law is enacted taking into consideration of conventions of Rights of the child and other related international instruments. The government of India acceded the convention of Rights of the Child (CRC) on 11 Dec.1992. The constitution of India empowers and cast duty on the state to ensure that their minimum requirements are met and their basic human rights are fully protected. The state intended to upkeep the principle adopted in the constitution. According to the international treaties and constitutional parameters, it is responsibility of the state to treat the children with all softness and for the best interest of the child. However, there is a strong public demand for harsher punishment for youths who commit adult crime i.e. serious crimes like murder, rape, robbery, dacoit etc. Such youths should be punished like adults. Of course, there is inflammatory rhetoric about youth crimes and there is increased public cynicism about the present JJS. Since the adoption our constitution a lot of efforts were made to understand the philosophy of the JJS and accordingly various laws were enacted. But all the efforts are half-hearted and need serious consideration. The stakeholders of Juvenile Justice Administration must take note of the serious conditions that prevail in our JJS. Intellectuals criticize about the poorly conceived policies and squandering of huge precious resources. The main criticism is the poorly treatment process and poor infrastructure. It need viable response from all quarters.

### *Development of Juvenile Justice System:*

The Juvenile Justice System developed throughout the world with a conception that, children are not mature like adult. They failed to understand the nature and consequence of their acts. This idea is based on the legal 'principle of DOLI INCAPAX' i.e. child do not have capacity

to form criminal intention. Therefore, a child cannot be made liable for acts which are illegal. An adult is commonly understood to mean a person who has reached maturity of mind. In the psychological perception, a person is mature 'who possesses certain skills that are the product of both cognitive development and the nature of the person's interactions with his or her environment. According to Jean Piaget – 'the ability to understand and interpret his or her world proceeds in a series of stages, beginning with sensimotor period, which lasts roughly from birth until age 2 and ending with the formal operations period, which lasts from roughly age 11 through adulthood. During this period, the child is able to understand and interpret the world differently because of his or her ability to engage in more abstract thought.

In addition, the development of the child's cognitive abilities is, to some extent, influenced by the in child's environment. Legislative authorities adopted this principles different Acts. It is to be noted that there is no general consensus about the definition of youth and child. Different statute have different mandate in the matter of age or attaining adulthood. There is policy shift in the new Juvenile Justice legislation. It is very progressive Act, designed to adopt the philosophy of parents' patria and prescribe institutionalized care/protection. The only shift witnessed is to punishing delinquents involved in case serious offence. JJS is adopting policy for the reformation and socialization of the young person and punishment is an exception. JJS is essentially different from ordinary criminal courts, adopting informal hearing.

### ***Principles of Juvenile Justice Act, 2015:***

Juvenile Justice Act 2000 is replaced by JJ Act 2015, with a view to update JJS in accordance with the International conventions and present social development. The new Act under lying following basic principles:-

1. Presumption of innocence.
2. Principles of dignity and worth.
3. Principles of participation with due regard to maturity.
4. Principles of best interest of the child.
5. Principles of family responsibility to take care.
6. Principles of ensuring safety without my abuse of the child.

7. Positive measures for wellbeing and development of child.
8. Principles of non-accusatory or non-stigmatizing semantics.
9. Principles of non-waiver of rights.
10. Principles of equality and non-discrimination.
11. Principles of right to privacy and confidentiality
12. Principles of institutionalization should be last resort.
13. Principles of Repatriation and restoration.
14. Principles of fresh start-erasing of past records.
15. Principles of diversion (without resorting to judicial proceedings)
16. Principles of natural justice.

## CONCLUSION

All the stake holders to be guided by the principles, while discharging function concerning children. In India, social legislations are always proved abortive due to improper infrastructure and co-ordination. Different homes prescribed, does not have an environment of home. These clogs of JJS need to be resorted to. Juvenile Justice System is based on the principle of social welfare and rights of the child. The prime focus of the JJS is reformation and rehabilitation. It is to create opportunity to the child to develop his personality. The goal after all, is to proceed ahead to create an egalitarian society of high order. Children are the future resources of the country. They must be transformed from negative to positive personality. However, looking to the past experience, we have to bridge the wide gap between theory and practice. In this process, we have to build a good infrastructure and efficient Juvenile Justice Administration. The new legislation carry the dreams, we need to make the dream reality. The idea is gradually gaining wider acceptance that juvenile delinquent needs the sympathy and understanding of our society and not the heavy hand of the law.

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